



General Assembly

January Session, 2003

**Committee Bill No. 5010**

LCO No. 2906

Referred to Committee on General Law

Introduced by:  
(GL)

**AN ACT CONCERNING RETAINAGE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective January 1, 2004*) This act shall be known  
2       as the "Retainage Act".

3       Sec. 2. (NEW) (*Effective January 1, 2004*) As used in sections 2 to 10,  
4       inclusive, of this act:

5       (1) "Construction" means building, altering, repairing, installing or  
6       demolishing in the ordinary course of business any: (A) Road,  
7       highway, bridge, parking area or related project; (B) building, stadium  
8       or other structure; (C) airport, subway or similar facility; (D) park,  
9       trail, athletic field, golf course or similar facility; (E) dam, reservoir,  
10      canal, ditch or similar facility; (F) sewage or water treatment facility,  
11      power generating plant, pump station, natural gas compression station  
12      or similar facility; (G) sewage, water, gas or other pipeline; (H)  
13      transmission line; (I) radio, television or other tower; (J) water, oil or  
14      other storage tank; (K) shaft, tunnel or other mining appurtenance; (L)  
15      electrical wiring, plumbing or plumbing fixture, gas piping, gas  
16      appliances or water conditions; (M) air conditioning conduit, heating

17 or other similar mechanical work; (N) leveling or clearing land; (O)  
18 excavating earth; (P) drilling wells of any type, including  
19 seismographic shot holes or core drilling; and (Q) similar work,  
20 structures or installations.

21 (2) "Contractor" means a person performing construction that is  
22 subject to a written contract with an owner;

23 (3) "Owner" means a person, municipality or state agency other than  
24 the Department of Transportation;

25 (4) "Retainage" means money payable to a contractor or  
26 subcontractor that has been withheld by the owner conditioned on  
27 substantial completion of all work in connection with a construction  
28 contract; and

29 (5) "Subcontractor" means a person performing construction for an  
30 owner not through a contract with the owner.

31 Sec. 3. (NEW) (*Effective January 1, 2004*) The provisions of sections 2  
32 to 10, inclusive, of this act do not apply to construction contracts for  
33 residential property containing four or fewer dwelling units.

34 Sec. 4. (NEW) (*Effective January 1, 2004*) (a) Except as otherwise  
35 provided in this section, retainage shall not be withheld on any  
36 construction contract unless an escrow arrangement is used. Securities  
37 may be offered by a contractor or subcontractor in lieu of retention.

38 (b) A municipality may provide in its bidding documents the  
39 manner in which retainage is to be held. A municipality may combine  
40 retainage from more than one project into a single account.

41 Sec. 5. (NEW) (*Effective January 1, 2004*) (a) Except as provided in  
42 subsection (b) of this section and section 4a-71 of the general statutes,  
43 all construction contracts shall provide that amounts due, except for  
44 retainage, shall be paid no later than thirty days after the owner  
45 receives a request for payment the owner does not dispute. The owner

46 may pay the contractor by first class mail, electronic funds transfer or  
47 hand delivery of the undisputed amount of a payment request based  
48 on work completed or service provided under the contract. If the  
49 owner fails to pay the contractor no later than thirty days after receipt  
50 of a request for payment the owner does not dispute, the owner shall  
51 pay interest to the contractor from the first day after payment was due,  
52 computed at one and one-half per cent of the undisputed amount per  
53 month or fraction of a month until payment is made. If an owner  
54 receives an improperly completed invoice, such owner shall notify the  
55 sender of the invoice no later than seven days after the date of receipt  
56 of the ways in which the invoice is improperly completed, and such  
57 owner shall have no further duty to pay on the improperly completed  
58 invoice until it is resubmitted to the owner as complete.

59 (b) A municipality may make payments no later than forty-five days  
60 after submission of a request for payment that is undisputed by the  
61 owner when grant money is a source of funding, if the construction  
62 contract specifically provides in a clear and conspicuous manner for a  
63 payment later than thirty-one days after submission of an undisputed  
64 request for payment.

65 (c) All construction contracts shall provide that contractors and  
66 subcontractors make payment to their subcontractors and suppliers for  
67 amounts owed for work performed on the construction project no later  
68 than seven days after receipt of payment from the owner, contractor or  
69 subcontractor. If the contractor or subcontractor fails to pay a  
70 subcontractor or supplier by first class mail or hand delivery no later  
71 than seven days after receipt of payment, the contractor or  
72 subcontractor shall pay interest to such subcontractor or supplier  
73 beginning on the eighth day after payment was due, computed at one  
74 and one-half per cent of the undisputed amount per month or fraction  
75 of a month until payment is made. Said payment provisions shall  
76 apply to all tiers of contractors, subcontractors and suppliers.

77 (d) A creditor of an owner, contractor or subcontractor shall not

78 collect, enforce a security interest against, garnish or levy execution on  
79 retainage payments, progress payments or other payments that are  
80 owed by an owner, contractor or subcontractor to a person, or such  
81 person's surety, who has furnished labor or material pursuant to a  
82 construction contract.

83 (e) Except as provided in section 49-41b of the general statutes,  
84 when making payments, the owner shall retain no more than seven  
85 and one-half per cent of the cost of estimated work done and value of  
86 materials stored on the site or suitably stored and insured off-site.  
87 When the contractor's work is substantially completed, no further  
88 retainage shall be withheld. A contractor shall retain no more than  
89 seven and one-half per cent retainage, regardless of whether retainage  
90 is withheld by the owner.

91 (f) Retainage may be held until substantial completion of each  
92 separate building, public work or other division of the contract on  
93 which a price is stated separately in the contract or that can be  
94 separately ascertained from the contractor's schedule of values if the  
95 escrow arrangement described in section 6 of this act is used.

96 Sec. 6. (NEW) (*Effective January 1, 2004*) An escrow account,  
97 established pursuant to an escrow agreement, shall be subject to the  
98 following conditions, terms and limitations:

99 (1) Only national banks or banks chartered with the state or savings  
100 and loan associations domiciled in the state may serve as escrow agent;

101 (2) The escrow agent shall provide monthly reports to the owner,  
102 the contractor and the subcontractor as to the amount of the escrow  
103 account held by the escrow agent and any additions to or payments  
104 from the escrow account. Withdrawals from the escrow account shall  
105 be made only subject to approval of the owner;

106 (3) If the owner has entered into more than one construction  
107 contract with the same contractor allowing for the maintenance of

108 escrow accounts, the owner may elect to combine the amounts held as  
109 retainage under each contract into one or more escrow accounts or  
110 may establish a separate escrow account for each contract;

111 (4) If a court of competent jurisdiction determines default by the  
112 contractor or overpayment by the owner, the escrow agent shall, no  
113 later than ten days, deliver a cashier's check to the owner in the  
114 amount of the default or overpayment, provided the amount is subject  
115 to the redemption value of any applicable investments at the time of  
116 disbursement;

117 (5) The escrow account shall be terminated upon completion and  
118 acceptance of the contract;

119 (6) All fees and expenses of the escrow agent shall be paid by the  
120 owner;

121 (7) The escrow account constitutes a pledge to the owner. The  
122 contractor or subcontractor shall not, except to its surety, assign,  
123 pledge, discount, sell or transfer such contractor's or subcontractor's  
124 interest in the escrow account. Money in the escrow account is not  
125 subject to levy, garnishment, attachment or other process;

126 (8) Material details regarding the escrow agreement shall be  
127 included in all solicitations for construction services and shall be given  
128 to the contractor and subcontractor prior to entering into a contract;

129 (9) The owner is not liable to the contractor, subcontractor or their  
130 sureties for the failure of the escrow agent to perform under the escrow  
131 agreement, or for the failure of a financial institution to honor  
132 investments issued by it that are held in the escrow account; and

133 (10) An escrow agent is not liable to a party to the escrow agreement  
134 unless the escrow agent is found by a court of competent jurisdiction  
135 to have breached such escrow agent's fiduciary duty to a beneficiary of  
136 the escrow agreement.

137 Sec. 7. (NEW) (*Effective January 1, 2004*) All material and work  
138 covered by partial payments become the property of the owner, but  
139 the contractor and subcontractor are not relieved from the sole  
140 responsibility for the care and protection of materials and work for  
141 which payments have been made, except that the contractor and  
142 subcontractor have no duty for the care and protection of materials  
143 and work after the owner has assumed occupancy or use of the work.

144 Sec. 8. (NEW) (*Effective January 1, 2004*) Ten days after certification  
145 of completion, any amounts due the contractor or subcontractor under  
146 the terms of the contract shall be paid to the contractor or  
147 subcontractor upon the presentation of the following:

148 (1) A properly executed release and duly certified voucher for  
149 payment;

150 (2) A release, if required, of all claims and claims of lien against the  
151 owner arising under and by virtue of the contract other than such  
152 claims of the contractor, if any, as may be specifically excepted by the  
153 contractor or subcontractor from the operation of the release in stated  
154 amounts to be set forth in the release; and

155 (3) Proof of completion.

156 Sec. 9. (NEW) (*Effective January 1, 2004*) If a dispute arises between  
157 the owner and the contractor or subcontractor as to work performed or  
158 materials supplied, the owner may retain only the amount that is  
159 reasonably calculated by such owner to cover the cost to correct a  
160 deficiency in the work or materials supplied. All other money due to  
161 the contractor or subcontractor shall be paid as provided in sections 4  
162 to 10, inclusive, of this act. The money retained by the owner as  
163 provided in this section shall be deposited into the escrow account for  
164 the benefit of the contractor or subcontractor and shall not be paid to  
165 the contractor or subcontractor until the dispute has been resolved.

166 Sec. 10. (NEW) (*Effective January 1, 2004*) If an owner fails to deposit

167 retainage that is withheld or to release retainage as required by  
168 sections 5, 8 or 9 of this act, the owner shall pay to the contractor or  
169 subcontractor an additional one and one-half per cent of the amount  
170 not deposited or released for each month or fraction of a month, until  
171 the retainage amount is paid in full.

172 Sec. 11. (NEW) (*Effective January 1, 2004*) In an action to enforce the  
173 provisions of sections 2 to 10, inclusive, of this act, a court may award  
174 court costs and reasonable attorney's fees.

This act shall take effect as follows:	
Section 1	<i>January 1, 2004</i>
Sec. 2	<i>January 1, 2004</i>
Sec. 3	<i>January 1, 2004</i>
Sec. 4	<i>January 1, 2004</i>
Sec. 5	<i>January 1, 2004</i>
Sec. 6	<i>January 1, 2004</i>
Sec. 7	<i>January 1, 2004</i>
Sec. 8	<i>January 1, 2004</i>
Sec. 9	<i>January 1, 2004</i>
Sec. 10	<i>January 1, 2004</i>
Sec. 11	<i>January 1, 2004</i>

***Statement of Purpose:***

To apply retainage provisions to certain public and private construction contracts, require specific payment schedules in construction contracts and establish conditions under which escrow accounts may be established pursuant to an escrow agreement.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

Co-Sponsors: REP. BERGER, 73rd Dist.